

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4113 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL MIYA AMU MIYA

Versus

ISHWERLAL MAGANLAL DESAI

Appearance:

MR VJ DESAI for Petitioner
MR BJ JADEJA for Respondent No. 1, 2, 3
MR PREMAL JOSHI, AGP for Resp. No.4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/12/2000

ORAL JUDGEMENT

The petitioner challenges the orders at Annexures "B", "C" & "D" to the petition, by which the entry certified on 31.1.80 as per Annexure "A" to the petition

was cancelled.

2. As per the entry No.1486 certified on 31.1.1980, it was directed that the transfer of the land in question which was shown as on new tenure through over-sight, should be treated as transfer on old tenure.

The grievance of the petitioner is that though the entry on the basis of the sale-deed dated 30.12.1999 was certified on 31.1.1980, the appeal of the respondents filed on 15.1.1988 was entertained without considering the question of delay in the filing of the appeal.

Under Rule 108 of the Gujarat Land Revenue Rules, 1972 an appeal against an order made under the said rule is required to be presented within sixty days from the date on which the copy of the order was served on the appellant as provided in sub-rule (5) of Rule 108. Under sub-rule (3) the Officer making the enquiry has to record order disposing of the dispute in the register and then make such entry in the diary of mutation as may be necessary. The officer shall certify the entry in the diary of mutation to be correct as provided in sub-rule (4). It is clear from the impugned orders at Annexures "B" "C" and "D" that the concerned authorities have not taken into account the period of limitation which is laid down in rule 108(5). While providing the period of limitation to be sixty days, it is also laid down that the appellate authority may, after recording its reasons in writing, admit an appeal after the period of sixty days, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period. The Revisional authority did not apply its mind to this important aspect of the matter while rejecting the revision application and thereby committed error in exercise of its jurisdiction. The impugned order of the revisional authority is therefore hereby set aside and the matter is remanded to the revisional authority for a fresh consideration in light of the provisions of Rule 108(5) of the said Rules. Rule is made absolute with no order as to costs.

*/Mohandas